

Page 2  
MAR 14 2012MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

DOROTHY K. BAERMAN, CLERK

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|--|--|--|--|
| United States District Court   |  | District-Northern of New York  |  |
| Name (under which you were convicted):<br><b>Baldeo Sahabir</b>                                  |  | Docket or Case No.:<br><b>1:09-CR-507-01</b>                                   |  |
| Place of Confinement: <b>D.Ray James Correctional Facility-P.O. Box 2000-Folkston, GA. 31537</b> |  | Prisoner No.:<br><b>15736-052</b>  |  |
| UNITED STATES OF AMERICA<br>Respondent,  |  | Movant (include name under which you were convicted)<br><b>Baldeo Sahabir.</b> |  |

## MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

(b) Criminal docket or case number (if you know): DNYN 1:09-CR-000507-001

2. (a) Date of the judgment of conviction (if you know):
- 08/19/2010

(b) Date of sentencing: 12/15/2010

3. Length of sentence:
- Sixty (60) Months Each Count

4. Nature of crime (all counts):
- 18 USC 1956(h) Conspiracy to Commit Money Laundering and Bank Proceeds Count 1**

**18 USC 1956 (a)(1)(B) (i) and (2) Aiding Money Laundering Count 2****18 USC 1344 and 2 Abetting a Scheme to Defraud a Federally Insured Bank Counts 3 through 10.**

5. (a) What was your plea? (Check one)

(1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? N/A

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☒ No ☐
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:
- (a) Name of court: United States Court of Appeals- Second Circuit
- (b) Docket or case number (if you know): 10-5296
- (c) Result: Appeal was Withdrawn
- (d) Date of result (if you know): mANDATE ISSUED 5/25/2011
- (e) Citation to the case (if you know): N/A
- (f) Grounds raised: N/A

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): N/A
- (2) Result: N/A
- (3) Date of result (if you know): N/A
- (4) Citation to the case (if you know): N/A
- (5) Grounds raised: N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: N/A
- (2) Docket or case number (if you know): N/A
- (3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A  
(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:** Movant submits a claim of denial of the effective assistance of Counsel in violation of the Sixth Amendment of the Constitution of the United States.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Movant's sentence is violative of his Sixth Amendment constitutional right to effective assistance of counsel in the trial and sentencing and direct appeal process as hereinafter more fully appears. Counsel failed to argue recent case law relevant to Movant's attribution of loss, which if presented would have translated into a mitigating position and lower guideline calculation. Counsel's omissions set forth in the afore pleadings were not the result of reasoned decisions based on strategic or tactical choices among all plausible options available to counsel for the defense of Movant during the sentencing and direct appeal process. But failure to remain abreast of current case law as it applied to the Movant's defense.

Movant was prejudiced from the unprofessional omissions of counsel, set forth in because, absent said omissions, there is a reasonable probability that the outcome of his trial process would have been different.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:  
The Appeal was withdrawn.

The issue is raised here for the first time due to the ineffectiveness of counsel.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

No previous postconviction motions have been filed. Movant raises issue in this venue for the first time.

Docket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

For the same reasons as cited under failure to raise this issue under grounds One.

GROUND TWO: There is an intervening change is the statute, Money Laundering under which the Movant was convicted.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Supreme Court has recently espoused a new rule in case law regarding the Money Laundering statute under which the Movant was convicted. Movant submits the new interpretation under relevant case law warrants a review of the sentence imposed for consideration of further departure.

The government requested a guideline sentence of 108 months based on a loss computation of \$3,564,838.24, joint and several.

At sentencing, the district court applied the parsimony principle and departed to impose a below guideline sentence of Sixty (60) months.

Movant is seeking further variance/downward departure from what has already been awarded based on the intervening change is the law.

Under the characteristics of the offense of Money Laundering, pursuant to section the Supreme Court' interpretation, the conduct of the Movant did not comport with the characteristics of money laundering.

The new interpretation, new rule requires a recalculation of the loss previously attributed to the Defendants, based on government calculations.

**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒(2) If you did not raise this issue in your direct appeal, explain why: N/A**No previous petitions have been filed.****(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: **The Issue was not raised due to the ineffectiveness of counsel.**

**GROUND THREE: There are extraordinary and compelling circumstances in mitigation not known to the court at the time of sentencing.**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Movant cites the statements of Lal Singh reflected in Exhibits "A" and "B" made to two individuals where he recants his testimony as to the participation and culpability of Movant Sahabir.

The newly discovered information supports the previously submitted theory that the Movant was used as a conduit, and did not actually fully embrace or foresee the full scope of the conspiracy, and did not profit from the offense in the amount that the government presented to the court as the basis of the guideline. The court is asked to consider exhibits A & B reflecting the recantations of the principal in the case and witness in the case in chief against the Movant.

Based upon the newly discovered evidence contained in the sworn statements of Ramotar and Ali, which specifically mitigates their role in the offense of conviction. Statements of the co-defendant reflect that the Movants did not embrace the full scope of the of the conspiracy as he, Lal Singh testified to in court. Statements reflect that the Movants culpability was not as great as originally painted by the government at trial based on Mr. Singh's testimony and in the presentencing report.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):



**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒(2) If you did not raise this issue in your direct appeal, explain why: Appeal was withdrawn**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/AName and location of the court where the motion or petition was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

No previous petitions have been filed.

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them: N/A

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Stephen R. Coffey

(b) At arraignment and plea: Paul Evangelista, Federal Public Defender  
10 Broad Street, 1st Floor- Utica, NY. 12901

(c) At trial: Stephen Coffey,  
54 State Street, 9th Floor-Albany, NY. 12207-2501

(d) At sentencing: Same as above

(e) On appeal: Appeal was withdrawn.

(f) In any post-conviction proceeding: Movant appears pro se

(g) On appeal from any ruling against you in a post-conviction proceeding:

**No previous post-conviction motions have been filed.**

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: **N/A**

(b) Give the date the other sentence was imposed: **N/A**

(c) Give the length of the other sentence: **N/A**

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion. **\* This motion is timely filed. The mandate from the United States Court of Appeals for the Second Circuit was issued 5/25/11. This motion is filed within twelve (12) months, one (1) year of the date of the issuance of the mandate, thereby deeming this motion as timely filed.**

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: Grant consideration of  
departure from the imposed term of imprisonment based on the intervening change in  
the law and accompanying circumstances presented in mitigation.

or any other relief to which movant may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct  
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on \_\_\_\_\_  
02-28-12 (month, date, year).

Executed (signed) on 02-28-12 (date).

  
\_\_\_\_\_  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not  
signing this motion.

IN FORMA PAUPERIS DECLARATION

\_\_\_\_\_  
[Insert appropriate court]

\* \* \* \* \*